

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4151 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

A.S. PARMAR

VERSUS

STATE OF GUJARAT & ANR.

Appearance:

MR SHALIN MEHTA for Petitioner

MS HARSHA DEVANI for Respondents

Coram: S.K. Keshote,J

Date of decision: 24/12/1997

C.A.V. JUDGMENT

#. The petitioner, an employee of the District Court,

Surendranagar, filed this Special Civil Application before this Court and challenge has been made to the order dated 18.12.84, annexure 'F', of the District Judge, Surendranagar, under which it has been ordered that the market rent as fixed by the Executive Engineer, Surendranagar, for Government (Revenue) Quarter No.6 at the rate of Rs.600/- p.m. shall be recovered from the pay bill of the petitioner with effect from 1.1.83 till the petitioner vacates the said Quarter.

#. From the Special Civil Application, it appears that on the request of the petitioner, the recovery of the rent has been made at the rate of Rs.300/- p.m. from his salary. This petition has been filed by petitioner on 28th August 1985 and by the time this petition has been filed, it may not be in dispute that some amount would have been recovered towards the arrears of rent from the salary of the petitioner. However, further recovery has been stayed by this Court. The petitioner, under the order of respondent No.2 dated 4.6.83, was transferred from Surendranagar to Bajana. At Surendranagar, the petitioner was occupying the Government (Revenue) Quarter No.6. The petitioner joined at Bajana on 14th December 1983. Vide letter dated 8th December 1983, the respondent No.2 asked the petitioner to vacate the said Quarter but the same was not vacated by petitioner. The petitioner sent reply to the aforesaid letter vide his application dated 19th December 1983 and showed his inability to vacate the Quarter for the reasons stated therein. It appears that the request for retention of the Quarter found favour of the then District Judge, Surendranagar, as it comes out from the document annexure 'B' dated 14.6.84, under which the petitioner was directed to vacate the said Quarter on or before 1st July 1984. It also appears that thereafter the petitioner has not vacated the said Quarter and he approached to the Secretary, Legal Department, Government of Gujarat and also to this Court by way of representations but neither the Secretary nor this Court has passed any order in his favour. However, the Secretary to the Legal Department has only recommended to the District Judge, Surendranagar to permit the petitioner to retain the Government accommodation till the academic session is over, i.e. upto June 1985.

#. The respondents have not filed reply to this Special Civil Application and as such, the averments made therein stand uncontroverted.

#. The learned counsel for the petitioner contended that the fixation of market rent at the rate of Rs.600/- p.m.

to be charged from the petitioner for staying in Government Quarter is highly arbitrary and unjustified. It has next been contended that before fixation of this amount at the market rate, no notice or opportunity of hearing has been given to the petitioner. The respondent No.2 has accepted this amount of market rent of the premises which has been fixed by Executive Engineer concerned without himself applying his mind. Lastly, the learned counsel for the petitioner contended that the demand of rent of the premises at the rate of Rs.600/p.m. is highly arbitrary and unjustified as the total emoluments of the petitioner were only Rs.900/- p.m. at the relevant time.

#. The learned counsel for respondents, on the other hand, contended that as per the Government Resolution dated 22nd October 1982, the respondent No.2 was perfectly within its competence to charge the market rent from the petitioner for over stay in the Government Quarter. It has further been contended that in the said Resolution, formula for fixation of the rent to be charged from the Government servants who over stay in the Quarter after their transfer has been given out and this rent has been determined by the Executive Engineer concerned on the basis of the above formula to which no exception can be taken. Carrying this contention further, the learned counsel for respondents contended that the petitioner, without there being any justification or any legal authority, has occupied the premises beyond permissible period and as such he is not a law abiding citizen. It is a case where a lenient view has been taken, otherwise retention of the Quarter beyond permissible period by the Government servant on transfer is a serious misconduct and the petitioner could have been punished for the same also but only the market rent has been demanded from him. Lastly the learned counsel for respondents contended that as the petitioner is a servant of the District Court he should have acted as a law abiding employee and that no sympathy should have been granted to the petitioner.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. On transfer, a Government servant, who has been allotted a Government accommodation at a place where from he was transferred, has no right whatsoever to continue in possession thereof beyond permissible period after his joining at the transferred place. The Government has laid down the period during which a Government servant can retain the Quarter after his relieving on transfer or

other contingency, from the transferred place. In the case of petitioner, as per the Government Resolution dated 22nd October 1982, copy whereof the petitioner himself has produced on record, the petitioner could have retained the Quarter for two months after his transfer. Where the transfer of a Government servant takes place during the midst of the academic year, the Government servant can obtain permission of the allotting authority for retention of the Government accommodation upto the end of the academic year showing the details of his/ her children studying in school/ colleges and the period of academic year etc. In case that request is accepted, then he can retain the Quarter and the rent recovered from him would be the same as was being recovered before the events took place. But in the case where the Government Quarter is retained beyond permissible period or extended period, then the rent has to be charged from him to be calculated on the basis of formula as given in the said Resolution. The validity of this Resolution has not been challenged by the petitioner in this Special Civil Application. It is also not the case of petitioner in the Special Civil Application that the amount of market rent which has been fixed by the Executive Engineer was not in accordance with the formula as laid down by the Government in its Resolution aforesaid.

#. In the Special Civil Application, the petitioner has given out that at the relevant time, his daughters were prosecuting studies in M.P.Shah Arts College, Surendranagar, for their B.A. Degree, whereas his son was prosecuting studies at the same College for his B.Com. Degree. He has further stated that at the time of his transfer his daughters and son have taken admission in the above college. The application of the petitioner dated 19th December 1983, sent in reply to the letter of the District Judge, dated 8th December 1983, is on record of this Special Civil Application, wherein the petitioner has disclosed this fact that his two daughters and son are studying in the college at Surendranagar. He made a request in this application that he may be permitted to retain the said Quarter till next general transfer, i.e. upto vacation. Meaning thereby, prayer has been made by the petitioner in this application for grant of permission to retain the Quarter till the end of academic session of his children. From the document annexure 'B', i.e. letter of the District Judge, Surendranagar, dated 14.6.84, addressed to the petitioner, it is borne out that the petitioner has been directed to vacate the Government Quarter by 1st July 1984. This letter of the District Judge, Surendranagar was issued after the application of the petitioner dated

19th December 1983. So the District Judge, Surendranagar, has permitted the petitioner to retain the Quarter till 30th June 1984. The District Judge has therefore permitted the petitioner to retain the Quarter till the end of academic year or may be one month more beyond the end of academic year. The petitioner, in view of the letter of the District Judge, Surendranagar, dated 14.6.84, may be taken to be correct to retain the Government Quarter till 1st July 1984. So retention of the Government Quarter by petitioner upto 1st July 1984 was under the order of the District Judge, Surendranagar, and as per the Government Resolution dated 22nd October 1982, till 30th June 1984, the rent could have been charged at the same rate as was being charged from the petitioner before the event took place. The order annexure 'F' of the District Judge, Surendranagar, dated 18.12.84, to the extent where recovery at the market rent from 1.8.83 is ordered to be made from petitioner, is wholly arbitrary and unjustified. Once the District Judge has accepted the request of the petitioner to extend the period of retention of the Quarter for the reasons given in his application dated 19.12.83, i.e. his two daughters and son were studying in the college at Surendranagar, recovery of the rent at the market rate as determined by the Executive Engineer, till 30th June 1984, could not have been ordered. Recovery of rent at the aforesaid market rate could have been only from 1st July 1984 onwards till the petitioner vacated the Government Quarter. The petitioner has made a statement in the Special Civil Application that he has already vacated the Government Quarter on 24th December 1984 and this fact has not been controverted by the respondents, and as such, this averment made by petitioner has to be accepted. The petitioner vacated the premises on 24.12.84 and recovery of the rent from him at the rate of Rs.600/p.m. could have been only for the period from 1st July 1984 upto 24th December 1984.

#. The contention of learned counsel for the petitioner that the order impugned in this Special Civil Application has been passed without notice to him or that the Executive Engineer determined the market rent of the premises without notice or opportunity to the petitioner is without any substance. The Resolution of the Government dated 22nd October 1982 is very clear and it lays down the period during which the Government servant can retained the Quarter and in case he retains the Quarter beyond permissible limits then what rent has to be borne and how this rent has to be arrived at. Once the Government has decided the formula for fixation of the rent to be charged from the Government servant for

retention of the Government Quarter beyond permissible limits, I fail to see how far it is correct to contend by learned counsel for the petitioner that before passing such an order, opportunity of hearing has to be given.

##. There is yet another ground on the basis of which the petitioner's claim for reduction in the amount of rent to be charged for the period during which he retained the Quarter beyond permissible period deserves no acceptance. Retention of Government Quarter by the Government servant beyond permissible period or extended period is a serious misconduct. The petitioner is a Clerk in the District Court and he should have acted as a law abiding employee. When he was permitted to retain the Quarter upto 30th June 1984, then immediately thereafter he should have vacated the Quarter and he should not have waited for the action of the District Judge to initiate proceedings against him for his eviction from the Quarter under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act. This conduct of the petitioner not to vacate the premises, the Government Quarter, after 1st July 1984, deserves to be deprecated. It is in fact, the District Judge, Surendranagar, who has acted leniently, otherwise, for this misconduct of the petitioner, he could have been chargesheeted and appropriate penalty could have been awarded. The Government servants or officers, if do not vacate the Government Quarter or premises immediately after their transfer or within permissible limits and they retain Quarter beyond that period, then I fail to see what for this Act is to be resorted to. In fact, such persons should be forced to vacate the premises rather than to give them premium to retain the Quarter by initiating proceedings for eviction under the aforesaid Act. It is not unknown to the Court that because of the proceedings initiated under the aforesaid Act, the Government servants get a way to retain the possession of Quarter for years together. After the order of the competent authority, there is a provision for appeal and normally in such matters, the appellate Court has to protect the petitioner, an employee, and then it is also not unknown that the matters come up before this Court and this Court may also protect them in appropriate cases. A Government Quarter, at a particular place, has to be allotted to a person who has been posted there, but for the reason of not handing over the possession of Government Quarters by transferred employees, this remedy has to be resorted which is time consuming and the employee of the category who has little respect for law, continue to retain the Quarters for years as a result of pendency of such proceedings. It is a matter concerned

with the Government and the Government should find out some other way to get the possession of the Quarters immediately from the employees who have been transferred elsewhere so that their Quarter can be allotted to other employee who has been posted vice or are in the waiting list. The Government servants are waiting for allotment of Quarters and they cannot get the same many a times for a long period for the reason that for eviction of the transferee, a process has to be taken, which is time consuming. The Government servant is not a tenant or even a licensee. He is in permissible possession of the Quarter of the Government and his rights are at much lower pedestal even than that of a licensee. But for getting the possession back of the Quarters from such class of persons, if the Government has to resort to the provisions of the Act aforesaid then only unscrupulous employees will be benefitted. The matter needs consideration of the Government and the Government may think of framing a law for getting immediate possession of the Government Quarters from its employees/ officers who are transferred to other place so that the other transferred employees/ officers waiting for all times may get the Quarters immediately.

##. In the result, this Special Civil Application succeeds in part and the impugned order annexure 'F' dated 18.12.84, is modified to the extent that the recovery of rent at the rate of Rs.600/- p.m. shall be made effective from 1st July 1984 till the date the petitioner had vacated the Quarter, i.e. upto 24th December 1984. The amount shall be calculated accordingly for the said period and after deducting the amount which has already been recovered from the petitioner, if something remains to be recovered from him, then the same may be recovered forthwith from the petitioner. The Rule and Special Civil Application stand disposed of in aforesaid terms with no order as to costs. A copy of this order be sent to the Chief Secretary to the Government of Gujarat.

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(sunil)